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Opinion

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CONCORD, N.H.

Gardner C. Turner, Chairman
Board of Trustees
Industrial School
Manchester, New Hampshire

Dear Gardner:

Thank you for your letter of April 8, 1958 in which you request our opinion with regard to a possible conflict between the provisions of RSA 169:1 and RSA 621:14. You state that this request arises out of the fact that the Municipal Court of Manchester has recommitted to the Industrial School one of your parolees who is now over eighteen years of age. You question the authority of the court to do this.

The portion of RSA 169:1 pertinent to this situation provides:

" . . . [I]n the case of a delinquent child over whom the court has acquired jurisdiction hereunder said jurisdiction shall continue until said child arrives at the age of twenty-one years of age unless he is previously discharged by the court, or jurisdiction over him released to the superior court."

RSA 621:14 provides:

"All minors committed to the industrial school under the terms of the preceding sections shall be under the care and subject to the control of the trustees of the school until such minors attain the age of twenty-one years."

Furthermore, RSA 621:17, 21 and 22 confer upon the Trustees of the Industrial School broad powers as to the release of children on parole, control of said children while on parole, revocation of parole and discharge from the School. It is your contention that a commitment to the School by a Court operates as a discharge which cuts off the continuing jurisdiction of the Court and that thereafter the child is subject to the sole control of the Trustees of the School.

In our opinion the fact that the child is over eighteen years of age is not controlling as under RSA 169:14 the Court, under its continuing jurisdiction, is expressly given the power to commit a child in excess of eighteen years of age to the School and certain other institutions. Therefore the question is simply whether the Court can recommit a child who has been released on parole from the School by the Trustees in the absence of a new act of delinquency on the part of the child.

It is our opinion that the Court does have this power under its continuing jurisdiction. The statute (RSA 169:1) provides only two methods by which the jurisdiction of the Court once acquired may be discontinued. One method is a release of jurisdiction to the Superior Court and the other is a discharge by the Court itself. There is nothing in the language of the statute to indicate a legislative intent that a commitment to the School shall operate as a discharge. Also the view that the Court has no jurisdiction over the child while confined in the Industrial School or while on parole therefrom would nullify the continuing jurisdiction of the Court as in many instances it might well be that a child would be kept on parole until he reached twenty-one years of age at which time the Court's jurisdiction ceases by the terms of the statute.

It is our opinion that the scheme of the statutes is to provide a method by which the Court, once it acquires jurisdiction over a delinquent child, shall continue to be primarily responsible for the child's welfare until he reaches the age of twenty-one. RSA 169:14 provides several alternatives for the Court in handling a given case with the welfare of the child as the chief concern. It is true that if the Court sees fit to commit a child to the Industrial School he is, of course, subject to the supervision and control of the Trustees while there and also during such time as he may remain on parole from the School. However, the legislative intent appears to be that the control of the Trustees over the child is at all times subject to the paramount authority of the Court which ordered the commitment. We must assume that the Municipal Courts will interfere with the actions of the Trustees only in cases which they consider to be exceptional. Apparently this is the way it has worked out in practice as I take it that this is a rather novel situation.

The views which I have expressed above are borne out by the language in Petition of Morin, 95 N.H. 518, 520, 521, 522, where the Court says:

" . . . Under the provisions of R.L., c. 463, s.17, committal of a delinquent child to the industrial school is required to be for the term of his minority. The jurisdiction of the Municipal Court continues until the child reaches twenty-one, unless he is discharged by the court, or jurisdiction is released to the Superior Court. Laws 1945, c. 29.

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" . . . Under the court's continuing jurisdiction (ss. 1, 13; Laws 1945, c. 29) deferred committal was as much within the Court's authority as was immediate committal. . . .

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" . . . Section 13 of chapter 132 provides that the court may 'commit the child to the industrial school, or continue the case with such orders as to care, custody, and probation as justice and the welfare of the child require.' The provisions conferring continuing jurisdiction indicate the legislative intent that the alternative dispositions specified shall not be mutually exclusive, but that the requisite orders may be made from time to time during the child's minority. See In re Gomez, supra."

In re Gomez, 113 Vt. 24, cited with approval in the Morin case, the Vermont Court uses the following language in regard to the continuing jurisdiction of the Municipal Court after a finding of delinquency:

" . . . From the time when the court determines that a child comes within the classes specified therein, such child becomes a ward of the court and so remains during . . . his minority unless sooner 'discharged' as provided by law. In re Hook, 95 Vt. at 499, 115 A. 730, 19 A.L.R. 610. Thus it appears that the court has authority to modify its orders from time to time and when in its discretion the best interests of the child require this to be done then it is the duty of the court to do so."

In the Hook case, cited in the above opinion in the Gomez case, the Vermont Court again used the following language in discussing the continuing jurisdiction of the Municipal Court:

" . . . From the moment that the court determines that a child comes within the classes specified therein, he becomes a ward of that court, and so continues until he attains his majority, unless sooner 'discharged' as provided in said chapter."

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"When a child is awarded to the care of the board of charities and probation, he becomes a ward of that board . . . and is 'discharged' within the meaning of G.L. 7323. That is to say, he passes out of the immediate control of the court. But the term 'discharged', as used in the latter section, does not mean an absolute and permanent release from the court's control. The award to the board is so far conditional that the court retains jurisdiction to make such further orders as future conditions may require; and to this extent the guardianship of the board is subservient to the paramount authority of the court. Any other construction would tend to subvert the fundamental purpose of the state."

Sincerely,

Louis C. Wyman
Attorney General

By

John J. Zimmerman
Assistant Attorney General

JJZ/lt